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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,782	11/20/2003	Martin Joseph Crippen	RPS920020184US1	8390

45219 7590 01/10/2005
KUNZLER & ASSOCIATES
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SALT LAKE CITY, UT 84111

EXAMINER

BOLES, DEREK

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 01/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

8H

Office Action Summary	Application No. 10/717,782	Applicant(s) CRIPPEN ET AL.	
	Examiner Derek S. Boles	Art Unit 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2004.
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1-20 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☒ The drawing(s) filed on 20 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 7, 10-12, 14, 16 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by IBM TDB (NN950835). See entire document. Regarding claims 2 and 10, see 6.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim(s) 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over IBM TDB in view of Fujimura (5,963,528). IBM TDB discloses all of the limitations of the claim(s) except for the spring being a torsion spring. Fujimura discloses the presence of a torsion spring. See col. 5, lines 9-39. Hence, one skilled in the art would find it obvious to modify the system of IBM TDB to include the torsion spring of Fujimura for the purpose of more precise actuation.

Claim(s) 4, 5 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over IBM TDB in view of Amori (5,646,823). IBM TDB discloses all of the limitations of the claim(s) except for a seal being comprised of a layer of elastomeric material. Amori discloses the presence of a seal being comprised of a layer of elastomeric material. See col. 3, lines 9-34.

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Hence, one skilled in the art would find it obvious to modify the system of IBM TDB to include the seal being comprised of a layer of elastomeric material of Amori for the purpose of improved airflow blockage.

IBM TDB discloses all of the limitations of the claim except for the orifice cover being a plate. However, since the applicant has failed to establish any criticality or synergistic results which are derived from the recited configurations, these limitations are considered a matter of obvious design choice. Thus, the applicant's design configurations would have been an obvious improvement to one of ordinary skill in the art with regard to the apparatus disclosed in IBM TDB.

Claims 8, 9, 17, 18 rejected under 35 U.S.C. 103(a) as being unpatentable over IBM TDB. It is well-known in the art of HVAC to design an enclosure being configured for positive/negative air pressure and having the ability to either force air into enclosure or exhaust air. Thus, it would have been obvious to one of ordinary skill in the art to incorporate the features of an enclosure being configured for positive/negative air pressure and having the ability to either force air into enclosure or exhaust air into the system of IBM TDB for the purpose of increased heat dissipation.

Response to Arguments

Applicant's arguments filed 9/10/04 have been fully considered but they are not persuasive. In response to applicant's argument that the IBM TDB reference's spring only provides enough force to partially close the flap approximately 30 degrees, applicant is directed to paragraph 5 of the IBM TDB where it states *By the addition of a flap as described below, which will close automatically and shut off the air flow when the fan is removed.* This

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reference's actuator accomplishes the same result as the applicant's actuator through a combination of a spring, gravity and airflow which when broadly read meets the limitations of applicant's actuator, which is not immune to natural phenomenon such as gravity. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a physical seal and maintaining the flap closed in the absence of an air stream to close the flap) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The above recitation of *shut off* is broadly considered a seal without further structural limitations by applicant.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Derek S. Boles at (703) 308-1804 or fax number (703) 872-9306.

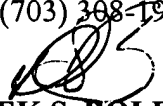
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Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0861. The Supervisory Primary Examiner for Art Unit 3749 is Ira Lazarus who can be reached at (703) 308-1935.

D.S.B.


DEREK S. BOLES
PRIMARY EXAMINER
GROUP 3700

11/25/04